

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CARVIS LAMAR JOHNSON

PLAINTIFF

V.

CIVIL ACTION NO. 3:21-CV-88-KHJ-MTP

CARRIE WILLIAMS, et al.

DEFENDANTS

ORDER

Before the Court is the [46] Report and Recommendation (“Report”) of United States Magistrate Judge Michael T. Parker. It recommends the Court grant Defendant Alexia Sanders’s [42] Motion for Summary Judgment, grant Defendants’ Morriah L. McElroy’s, Donald Mitchell’s, Tameika Reece’s, Janice Smiley’s and Carrie Williams’s [44] Motion for Summary Judgment, dismiss the claims against Defendant Dial Mile’s without prejudice, and dismiss this action without prejudice. [46] at 9. Written objections to the Report were due by March 21, 2023. The Report notified the parties that failure to file written objections to the findings and recommendations by that date would bar further appeal in accordance with 28 U.S.C. § 636. *Id.* at 10.

When no party has objected to a magistrate judge’s report and recommendation, the Court need not review it de novo. 28 U.S.C. § 636(b)(1); *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Instead, the Report is reviewed under the “clearly erroneous, abuse of discretion and contrary to law” standard of review. *Wilson*, 864 F.2d at 1221.

On February 3, 2021, Plaintiff Carvis Lama Johnson filed his pro se [1] Complaint pursuant to 42 U.S.C. § 1983. He sued several people for events that happened on three separate dates. On December 5, 2020, Johnson alleges he heard Defendants Nurse Alexia Sanders, Morriah L. McElroy, and Janice Smiley tell an inmate they would pay him in drugs to attack Johnson. *See* Omnibus Order [33] at 2. On December 28, Johnson claims that Defendant Tameika Reece watched an inmate attack him. *Id.* After the attack, Johnson yelled at Reece for not doing anything. *Id.* Johnson alleges that Reece told Defendant Donald Mitchell about Johnson yelling at her *Id.* He claims that Mitchell then hit him with a gun or rifle, drug him off camera, and then continued to beat and kick him. *Id.* at 2–3. Finally On January 10, 2021, Johnson claims Defendant Dial Mile tried to break his arm through the tray flap when Mile’s was delivering his breakfast. *Id.* at 3. Johnson seeks \$830,000 in monetary damages.

On September 2, 2022, Sanders filed her [42] Motion for Summary Judgment, arguing Johnson’s Complaint should be dismissed for failure to exhaust his administrative remedies.¹ On September 8, McElroy, Mitchell, Reece, Smiley, and Williams also filed their [44] Motion for Summary Judgment for Failure to Exhaust Administrative Remedies. Johnson did not respond.

The Magistrate Judge agreed with the Defendants that Johnson failed to exhaust his administrative remedies. *See* [46] at 3–7. Pro se prisoners must exhaust

¹ On March 27, 2023, Sanders and Johnson entered an [49] Agreed Judgment of Dismissal with Prejudice as to the claims against Sanders. Accordingly, the Court finds that Sanders’s [42] Motion for Summary Judgment is moot.

their administrative remedies before suing under 42 U.S.C. § 1983. 42 U.S.C. 1997e(a). The Magistrate Judge found that Johnson failed to comply with the Mississippi Department of Correction's ("MDOC") Administrative Remedy Program before filing his suit in this Court. *Id.* at 4–5. Accordingly, he recommended that Defendants' [42] and [44] Motions for Summary Judgment be granted. He also suggested that the claims against Defendant Miles be dismissed for failure to serve process.²

Johnson did not object to the Report. The Report is neither clearly erroneous nor contrary to law.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the [46] Report and Recommendation of the United States Magistrate Judge Michael T. Parker is adopted as the opinion of this Court.

IT IS FURTHER, ORDERED AND ADJUDGED that:

- Defendant Alexia Sanders's [42] Motion for Summary Judgment is denied as moot. Johnson's claims against Sanders are dismissed with prejudice pursuant to the [49] Agreed Judgment of Dismissal;
- Defendants Morriah L. McElroy's, Donald Mitchell's, Tameika Reece's, Janice Smiley's and Carrie Williams's [44] Motion for Summary Judgment is granted. The claims against them are dismissed without prejudice;
- Johnson's claims against Defendant Dial Mile are dismissed without prejudice; and

² Because Williams was proceeding in forma pauperis, the Court requested the Defendants waive service of process. [46] at 8. MDOC waived service as to its employees *Id.* But MDOC has no record of a Dial Mile ever having been employed with MDOC. *Id.* To date, Johnson has not provided the Court with additional information so that Mile can be identified and served. *Id.* at 8–9.

- This action is dismissed without prejudice.

SO ORDERED AND ADJUDGED this the 27th day of March, 2023.

s/ *Kristi H. Johnson*
UNITED STATES DISTRICT JUDGE